APPEAL NO. 041548
FILED AUGUST 5, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on May 26, 2004. The hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) had become final pursuant to Section 408.123. The appellant (claimant herein) files a request for review in which she contends the hearing officer's finding that there was insufficient evidence to establish compelling medical evidence that there was clear misdiagnosis or a previously undiagnosed condition was contrary to the evidence. The respondent (carrier herein) replies that the decision of the hearing officer was supported by the evidence and should be affirmed.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Pursuant to Section 408.123(d) a certification of MMI and IR becomes final if not disputed within 90 days after receipt of written notification of the certification. 408.123(e) provides certain exceptions, which, if they apply, permit a dispute of an MMI and IR certification after 90 days of receipt. The present case turns on whether or not the claimant established that the exception concerning compelling medical evidence of a clear misdiagnosis or a previously misdiagnosed condition applies. The hearing officer found that the evidence failed to establish compelling medical evidence that there was a clear misdiagnosis or a previously undiagnosed condition.

Whether or not there was compelling medical evidence that there was a clear misdiagnosis or a previously undiagnosed condition is a question of fact. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the

evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no basis to reverse the decision of the hearing officer.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

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Gary L. Kilgore
Appeals Judge

CONCUR:

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Elaine M. Chaney
Appeals Judge

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Chris Cowan
Appeals Judge